APPEAL NO. 031675
FILED AUGUST 7, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on May 15, 2003. The hearing officer determined that the appellant/cross-respondent's (claimant) compensable cervical injury extends to include a lumbar strain, but does not extend to or include radiculopathy, and that the claimant has not sustained any disability.

The claimant appeals the determinations that the compensable injury does not extend to radiculopathy and that he did not have disability on sufficiency grounds. The respondent/cross-appellant (carrier) appeals the determination that the compensable injury includes a lumbar strain. The carrier responds to the claimant's appeal urging affirmance of the radiculopathy, extent, and disability issues. The file does not contain a response to the carrier's appeal.

DECISION

Affirmed.

The claimant testified how he was working in a railroad tank car, when he slipped and fell backward hitting his back and neck on the floor on _____. The carrier accepted a cervical strain injury, which the carrier contends has resolved. The claimant reported an injury and was sent to the employer's doctor on March 12, 2002. The doctor examined the claimant, took x-rays, diagnosed cervical muscle strain, and released the claimant to light duty. The claimant, who testified through a translator, said that he had problems communicating with the employer's doctor and changed doctors to Dr. S. The claimant saw Dr. S for the first time on March 25, 2002, at which time Dr. S took the claimant off work. Dr. S diagnosed low back pain (in addition to the accepted cervical injury) radiating into the hips. In the meantime, while processing the claimant's claim, the employer learned that the claimant was using a false social security card and the claimant's employment was terminated for cause. Other factors that came to light were that the claimant had a one-hour radio show on a Spanish language radio station and a surveillance video taken in December 2000 showed the claimant performing normal activities without signs of discomfort. The claimant testified that he did the radio show as a volunteer and received no pay for that work.

The hearing officer, in the Discussion portion of her decision, explained her determinations that the mechanics of the fall make it "highly likely" that the claimant sustained a lumbar strain, and that the medical records documenting radicular pain "overstate the severity of the claimant's symptoms." Regarding disability, the hearing officer commented on the claimant's termination for cause, that the claimant had failed to prove that his inability to obtain and retain employment was due to the compensable injury rather than the employment termination, and again commented that the doctors

had "overstated" the claimant's complaints and concluded that the preponderance of the credible evidence does not indicate that the claimant had disability (as defined in Section 401.011(16)).

The questions of extent of the compensable injury and whether the claimant had disability presented questions of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). As the fact finder, the hearing officer was charged with the responsibility of resolving the conflicts and inconsistencies in the evidence and deciding what facts the evidence had established. This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). The evidence was subject to conflicting interpretations and although another fact finder might have reached a different conclusion, that is not a sound basis on which to reverse the hearing officer's decision. Salazar, *et al*. v. Hill, 551 S.W.2d 518 (Tex. Civ. App.-Corpus Christi 1977, writ ref'd n.r.e.). We have reviewed the complained-of determinations and conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **ST. PAUL FIRE & MARINE INSURANCE COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Thomas A. Knapp
Appeals Judge

CONCUR:

_____
Judy L. S. Barnes
Appeals Judge

_____
Edward Vilano
Appeals Judge